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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,796	03/07/2002	Jonathan D. Smith	RBC-101US	3409
24314	7590	11/29/2005	EXAMINER	
JANSSON, SHUPE & MUNGER & ANTARAMIAN, LTD 245 MAIN STREET RACINE, WI 53403			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/092,796	<b>Applicant(s)</b> SMITH, JONATHAN D.	
	<b>Examiner</b> Jeffrey L. Gellner	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 55-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 55-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Upon reconsideration of the language of the claims and the prior art, Examiner has applied new rejections and prior art. Examiner regrets any inconvenience to Applicant.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6, 8, 9, 11-19, 55-63, 65, 66, and 68-71 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for gibberellic acid to result in cranberries having a mass of less than 0.6 grams when applied, does not reasonably provide enablement for all “plant-growth-regulating composition[s]” as claimed in claims 1 and 56, at line 2, and claim 71, at lines 2-3. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The specification appears to only support the use of gibberellic acid in for this method. Examiner does not know of any research that shows that other growth regulators, such as auxins or ethylene, when applied to cranberries during the period of flower bloom will result in the fruit having a mass of less than 0.6 grams or 0.75 grams or to have a particular percentage fruit set. (see MPEP 2164 for a discussion on enablement, especially genus/species)

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Claims 72-77, 79, 80, and 82-89 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for gibberellic acid to result in cranberries having a fruit set of at least 80% when applied, does not reasonably provide enablement for all “plant-growth-regulating composition[s]” as claimed in claim 72. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The specification appears to only support the use of gibberellic acid in for this method. Examiner does not know of any research that shows that other growth regulators, such as auxins or ethylene, when applied to cranberries during the period of flower bloom will result in the fruit set of at least 80% or 50%. (see MPEP 2164 for a discussion on enablement, especially genus/species)

Claims 71-89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claims 71 and 72, lines 4 and 3, respectively, Applicant claims “fruit set of at least 80%.” In the “DETAILED DESCRIPTION OF PREFERRED EMBODIMENTS” Applicant discloses the use of GA, by itself, applied to cranberries at concentrations of solution of about 25-350 ppm with 60-100 gallons of solution applied per acre. In the “Materials and Methods” section of their paper Mainland et al. appear to encompass these rates of application of GA but do not achieve fruit set of at least 80% (see Table 1 of Mainland et al.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 71-89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 14, 15, 60, 61, 71 and 72, these claims claim, *inter alia*, a method of growing cranberries where a growth regulator is applied to the plants during bloom period which results in a fruit set of at least 80%. The claims are indefinite because it is unclear as to the amount of growth regulator that must be applied to achieve the result. Such factors as genotype of the plant, type and conditions of the soil, weather, and health of the plant would influence the amount of growth regulator needed to achieve at least 80% fruit set. That is, the amount of growth regulator needed to be sprayed to fall within the language of the claim would vary due to these factors. Hence, a third party would not know the metes and bounds of the claim language.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 and 55-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mainland et al. (American Society for Horticultural Science).

As to claims 1, 7, 56, 64 and 67, Mainland discloses applying a plant-growth-regulating composition, gibberellin (abstract and “GA<sub>3</sub>” of Tables 1 and 2 of pages 297 and 298) to cranberry plants at boom (1<sup>st</sup> paragraph of the “Materials and Methods” section of page 297) that reduces mature fruit mass (see “Table 2” of page 298). Not disclosed is the method one for commercially growing miniature cranberries and the mature mass being less than 0.6 grams. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mainland et al. by using with a commercial crop (since this paper discusses GA’s commercial use) and to achieve a mature fruit mass of less than 0.6 grams by applying the amount of GA need to achieve this fruit size depending upon market conditions.

As to claims 2-6, 8-19, 55, 57-63, 65, 66, and 68-70, the limitations of claim 1 are disclosed and described above. Not disclosed are specific limitations such as concentration of GA, time of application, and means of application. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Mainland et al. by choosing a specific concentration of GA, specific time of application, or specific means of application so as to achieve a specific goal of fruit size since these limitations are commonly known variables that growers routinely manipulate.

As to claim 71, Mainland discloses applying a plant-growth-regulating composition, gibberellin (abstract and “GA<sub>3</sub>” of Tables 1 and 2 of pages 297 and 298) to cranberry plants at boom (1<sup>st</sup> paragraph of the “Materials and Methods” section of page 297) that results in the plants with fruit set of at least about 80% (see Table 1 of page 297 at “% set” for “500 ppm GA<sub>3</sub> and 2000 ppm Alar”) and reduces mature fruit mass (see “Table 2” of page 298). Not disclosed

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is the method one for commercially growing miniature cranberries and the mature mass being less than 0.6 grams. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mainland et al. by using with a commercial crop (since this paper discusses GA's commercial use) and to achieve a mature fruit mass of less than 0.6 grams by applying the amount of GA need to achieve this fruit size depending upon market conditions.

As to claims 72, 78, and 81, Mainland discloses applying a plant-growth-regulating composition, gibberellin (abstract and "GA<sub>3</sub>" of Tables 1 and 2 of pages 297 and 298) to cranberry plants at boom (1<sup>st</sup> paragraph of the "Materials and Methods" section of page 297) that results in the plants with fruit set of at least about 80% (see Table 1 of page 297 at "% set" for "500 ppm GA<sub>3</sub> and 2000 ppm Alar"). Not discloses is the method one for commercially growing miniature cranberries. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mainland et al. by using with a commercial crop (since this paper discusses GA's commercial use).

As to claims 73-77, 79, 80, 82-89, the limitations of claim 72 are disclosed and described above. Not disclosed are specific limitations such as concentration of GA, time of application, and means of application. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Mainland et al. by choosing a specific concentration of GA, specific time of application, or specific means of application so as to achieve a specific goal of fruit size since these limitations are commonly known variables that growers routinely manipulate.

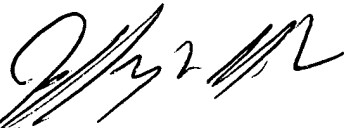
***Response to Arguments***

Applicant's arguments (received 6 June 2005) with respect to claims 1-19 and 55-89 (from Applicant's amendment with Applicant's date of 3 June 2005) have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner  
Primary Examiner  
Art Unit 3643